

1 STEVEN BENITO RUSSO  
Chief of Enforcement  
2 JULIA BILAUER  
Commission Counsel  
3 **FAIR POLITICAL PRACTICES COMMISSION**  
428 J Street, Suite 620  
4 Sacramento, CA 95814  
Telephone: (916) 322-5660  
5 Facsimile: (916) 322-1932  
6 Attorneys for Complainant

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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA  
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12 In the Matter of	) FPPC No.: 99/193
	) OAH No.: N2001020159
14 DANNY LYNN GAMEL and RUDY	)
15 MICHAEL OLMOS,	) REPLY TO RESPONDENT'S RESPONSE
	) TO MOTION TO STRIKE
16	) Commission Meeting Date: October 2, 2003
17 Respondents.	)

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19 In reply to a motion to strike filed by the Enforcement Division, Respondent Rudy Michael  
20 Olmos shortened the original brief that he submitted to the Commission to conform to the page  
21 limitation established by Executive Director Mark Krausse. In the revised brief, Respondent  
22 prematurely discusses evidence heard by an administrative law judge ("ALJ"), even though the  
23 Commission has not yet even considered whether to review such evidence by obtaining a copy of the  
24 hearing transcript.

25 It is the position of the Enforcement Division that the Commission has the authority and the  
26 discretion to reassess the penalty imposed upon Respondent without each commissioner having to obtain  
27 a copy of, and carefully reading, the hearing transcript. In this matter, the Commission has the benefit of  
28 findings of fact and determination of law made by the ALJ after hearing extensive testimony and after

1 having an opportunity to evaluate the credibility of witnesses as they testified in person. As set forth in  
2 the California Administrative Procedure Act and California case law, the decision makers of an agency  
3 have the authority to either adopt or reduce a penalty proposed by an ALJ without personally reading the  
4 entire record of the proceedings. (Govt. Code § 1517, subd. (b); *Dami v. Department of Alcoholic*  
5 *Beverage Control* (1959) 176 Cal. App. 2d 144, 152.)

6 The penalty issue in this matter with regard to Respondent has been remanded to the  
7 Commission because the proposed ALJ decision, which was adopted in its entirety by the Commission,  
8 did not adequately explain the reason for imposing a penalty of \$2,000 upon Respondent. The  
9 Commission must now provide an adequate explanation. Indeed, due process and judicial review  
10 statutes require that the ALJ make findings that “bridge the analytic gap between the raw evidence and  
11 ultimate decision.” (*Respers v. University of California Retirement System* (1985) 171 Cal.App.3d 864,  
12 872-873.) The commissioners can fulfill this requirement simply by relying on the factual findings in  
13 the ALJ decision that has been previously adopted by the Commission and upheld after judicial review.

14 Notwithstanding the position of the Enforcement Division, the commissioners have the authority  
15 and the discretion to request copies of, and personally read, the hearing transcript. At the time that the  
16 Enforcement Division submitted its five-page brief following remand, the Commission had not yet been  
17 called upon to make a determination regarding whether to rely on the findings of the ALJ, remand the  
18 case to the ALJ for further findings, or review the hearing transcript and itself make further findings  
19 based on the transcript. Therefore, if the commissioners make the decision to review the transcript, the  
20 Enforcement Division would like an opportunity to brief the evidence in the transcript prior to the  
21 Commission making a final determination regarding the penalty to be imposed upon Respondent.  
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*In the Matter of Danny Lynn Gamel and Rudy Michael Olmos  
FPPC No. 99/193*

**PROOF OF SERVICE**

I am a citizen of the United States, employed in the City and County of Sacramento, California. I am over the age of eighteen years and not a party to the above-entitled action; my business address is 428 J Street, Sacramento, California. On this date I served the parties a true and correct copy of the following document(s):

. Reply to Respondent's Response to Motion to Strike

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**MANNER OF SERVICE**

**(U.S. Regular Mail)** By placing in a sealed envelope, addressed as indicated below, with postage fully prepaid, and depositing with the U.S. Postal Service. I am familiar with the procedure of the Fair Political Practices Commission for collection and processing of correspondence for mailing with the U.S. Postal Service in the ordinary course of business.

**PARTY(IES) SERVED AND ADDRESS:**

Rudy Michael Olmos  
via Gary L. Huss (Attorney of Record)  
246 West Shaw Avenue  
Fresno, California 93704

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on September 29, 2003 at Sacramento, California.

  
\_\_\_\_\_  
Shirley Fong